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7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**

9 **Case No. 5:18-cv-01073**

10 JAMES LINEBERGER,
Plaintiff,

11 v.

12 NAVIENT SOLUTIONS, LLC, formerly
known as NAVIENT SOLUTIONS, INC.,
13 Defendant.

14 **COMPLAINT AND DEMAND FOR**
15 **JURY TRIAL**

1. TCPA, 47 U.S.C. § 227
2. RFDCPA, CAL. CIV. CODE § 1788
3. Invasion of Privacy - Intrusion
Upon Seclusion

16 **COMPLAINT AND DEMAND FOR JURY TRIAL**

17 Plaintiff James Lineberger (“Plaintiff”) through his attorneys, alleges the following
18 against Defendant Navient Solutions, LLC, formerly known as Navient Solutions, Inc.
19 (“Defendant”).

20 **INTRODUCTION**

21
22 1. Count I of Plaintiff’s Complaint is based upon the Telephone Consumer
23 Protection Act (“TCPA”), 47 U.S.C. § 227. The TCPA is a federal statute that broadly
24 regulates the use of automated telephone equipment. Among other things, the TCPA
25 prohibits certain unsolicited marketing calls, restricts the use of automatic dialers or
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1 prerecorded messages, and delegates rulemaking authority to the Federal Communications
2 Commission (“FCC”).

3
4 2. Count II of Plaintiff’s Complaint is based upon Rosenthal Fair Debt
5 Collection Practices Act (“RFDCPA”), Cal. Civ. Code § 1788, which prohibits debt
6 collectors from engaging in abusive, deceptive and unfair practices in connection with the
7 collection of consumer debts.

8
9 3. Count III of Plaintiff’s Complaint is based upon the Invasion of Privacy -
10 Intrusion upon Seclusion, as derived from § 652B of the Restatement (Second) of Torts.
11 § 652B prohibits an intentional intrusion, “physically or otherwise, upon the solitude or
12 seclusion of another or his private affairs or concerns... that would be highly offensive to
13 a reasonable person.”

14 15 **JURISDICTION AND VENUE**

16 4. Jurisdiction of the Court arises under 28 U.S.C. § 1331 and 47 U.S.C. § 227.

17 5. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part
18 of the events or omissions giving rise to the claim occurred in this District.

19
20 6. Defendants transacts business in the state of California; thus personal
21 jurisdiction is established.

22 **PARTIES**

23 7. Plaintiff is a natural person residing in Hemet, Riverside County, California.

24
25 8. Navient is a creditor engaged in the business of giving loans and managing
26 credit accounts with its principal place of business located at 2001 Edmund Halley Drive,
27
28

1 Reston, VA 20191. Defendant can be served with process at Corporation Service Company,
2 100 Shockoe Slip, 2nd floor, Richmond, VA 23219.

3
4 9. The debt(s) that Defendant is attempting to collect on is an alleged obligation
5 of a consumer to pay money arising out of a transaction in which the money, property,
6 insurance or services which are the subject of the transaction are primarily for personal,
7 family, or household purposes.

8
9 10. During the course of its attempts to collect debts, Defendant sends to debtors
10 bills, statements, and/or other correspondence, via the mail and/or electronic mail, and
11 initiates contact with alleged debtors via various means of telecommunication, such as by
12 telephone and facsimile.

13
14 11. Defendant acted through their agents, employees, officers, members,
15 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
16 representatives, and insurers.

17 **FACTUAL ALLEGATIONS**

18 12. Defendant attempted to collect on a consumer debt from Plaintiff.

19
20 13. In or around October 2016, Navient began placing calls to Plaintiff's cellular
21 and home phone numbers (915) 816-5443 and (951) 816-5443, in an attempt to collect an
22 alleged debt(s).

23 14. The calls originated from: (513) 914-4612; (617) 762-5957; (202) 899-1318;
24 (765) 637-0794; (856) 316-7057; (617) 762-5367; (765) 637-0785; (317) 550-5609; (302)
25 261-5692; (703) 935-1159; (570) 904-8757; (512) 782-4660; (877) 614-1160.
26
27
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1 15. Defendant called Plaintiff several times from each number before calling
2 from the next number, in the order they are listed.

3 16. Upon information and belief, those phone numbers are owned or operated by
4 Defendant.
5

6 17. On or about October 7, 2016, at 8:22 a.m., Plaintiff called Defendant at (888)
7 272-5543 and spoke with a representative by the name of Christina.

8 18. Plaintiff unequivocally revoked consent to be called any further on his
9 cellular phone (951) 816-5443 and home phone (951) 658-6414.
10

11 19. Navient's representative informed Plaintiff that calls will not stop and that
12 he had to submit his request in writing.

13 20. After Plaintiff had revoked his consent to be called, Defendant began calling
14 Plaintiff incessantly. In less than eight months, between October 13, 2016 and May 31,
15 2017, Defendant called Plaintiff no less than **275 times**.
16

17 21. Defendant called Plaintiff at both his cell phone approximately **150 times**,
18 and at his home phone approximately **125 times**.
19

20 22. Defendant called Plaintiff multiple times a day. For example, Defendant
21 called Plaintiff **eight times** on November 2, 3, 18, and 23, **nine times** on November 8 and
22 9, **ten times** on November 11 and 16, **eleven times** on November 17, **twelve times** on
23 November 21, and **thirteen times** on November 22, in 2016.
24

25 23. The FCC noted in its 2003 TCPA Order that a predictive dialer is
26 "equipment that dials numbers and, when certain computer software is attached, also
27 assists telemarketers in predicting when a sales agent will be available to take calls. The
28

1 hardware, when paired with certain software, has the capacity to store or produce numbers
2 and dial those numbers at random, in sequential order, or from a database of numbers.”
3 2003 TCPA Order, 18 FCC Rcd at 14091, para. 131.
4

5 24. The FCC further explained that the “principal feature of predictive dialing
6 software is a timing function, not number storage or generation.” *Id.*

7 25. Finally, the FCC stated that “a predictive dialer falls within the meaning and
8 statutory definition of ‘automatic telephone dialing equipment’ and the intent of
9 Congress.” *Id.* at 14091-92, paras. 132-33.
10

11 26. Defendant placed calls to Plaintiff in a manner to predict the times she was
12 available to answer her phone, indicating the use of a predictive dialer. After receiving
13 calls at seemingly random times, the calls became more consistent at certain times of the
14 day. For example, Defendant called Plaintiff at 1:20 p.m. on both April 25 and 27, 2017.
15

16 27. The conduct was not only willful but was done with the intention causing
17 Plaintiff such distress, so as to induce him to pay the debt.

18 28. Further, the conduct was done with such frequency and intensity so as to
19 harass Plaintiff.
20

21 29. As a result of Defendant’s conduct, Plaintiff has sustained actual damages
22 including but not limited to, embarrassment, shame, worry, grief, anguish, humiliation,
23 and physical and mental pain.
24

25 30. Further, Defendant’s calls often occurred while Plaintiff was busy with his
26 daily activities and disrupted his day. Particularly the calls to Plaintiff’s home phone
27 number required Plaintiff to drop what he was doing and run to pick up the telephone.
28

1 31. The **no less than 275 phone calls** placed from Defendant to Plaintiff's
2 cellular and home phones caused Plaintiff extreme emotional distress and aggravation.

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4 **COUNT I**
5 **(Violations the TCPA, 47 U.S.C. § 227)**

6 32. Plaintiff incorporates by reference all of the above paragraphs of this
7 Complaint as though fully stated herein.

8 33. Defendant violated the TCPA. Defendant's violations include, but are not
9 limited to the following:

10 a. Within four years prior to the filing of this action, on multiple occasions,
11 Defendant violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii) which states in
12 pertinent part, "[i]t shall be unlawful for any person within the United States
13 . . . to make any call (other than a call made for emergency purposes or made
14 with the prior express consent of the called party) using any automatic
15 telephone dialing system or an artificial or prerecorded voice — to any
16 telephone number assigned to a . . . cellular telephone service . . . or any
17 service for which the called party is charged for the call.

18 b. Within four years prior to the filing of this action, on multiple occasions
19 Defendant willfully and/or knowingly contacted Plaintiff at Plaintiff's
20 cellular and home telephones using an artificial prerecorded voice or an
21 automatic telephone dialing system and as such, Defendant knowingly and/or
22 willfully violated the TCPA.
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1 34. Defendant's calls constitute calls that are not for emergency purposes as defined by
2 47 U.S.C. § 227(b)(1)(A).

3 35. Defendant's calls are placed to a telephone number assigned to a cellular telephone
4 service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §
5 227(b)(1).

6 36. Under the TCPA and pursuant to the FCCs January 2008 Declaratory Ruling, the
7 burden is on the Defendant to demonstrate that the Plaintiff provided express consent within
8 the meaning of the statute because it is the best entity to determine how numbers were
9 attained.

10 37. As a result of Defendant's violations of 47 U.S.C. § 227, Plaintiffs is entitled to an
11 award of five hundred dollars (\$500.00) in statutory damages, for each and every violation,
12 pursuant to 47 U.S.C. § 227(b)(3)(B). If the Court finds that Defendant knowingly and/or
13 willfully violated the TCPA, Plaintiffs are entitled to an award of one thousand five hundred
14 dollars (\$1,500.00), for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and
15 47 U.S.C. § 227(b)(3)(C).

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20 **COUNT III**
21 **Violation of the Rosenthal Fair Debt Collection Practices Act,**
22 **Cal. Civ. Code § 1788**

23 38. Plaintiff incorporates herein by reference all of the above paragraphs of this
24 Complaint as though fully set forth herein at length.

25 39. Defendant violated the RFDCPA. Defendant violated Cal. Civ. Code § 1788.17 by
26 collecting or attempting to collect a consumer debt without complying with the provisions
27 of 15 U.S.C. §§ 1692b-1692j.

1 a. Defendants violated Cal. Civ. Code § 1788.17 by violating 15 U.S.C. §
2 1692d by engaging in conduct, the natural consequence of which is to
3 harass, oppress or abuse any person in connection with the collection of the
4 alleged debt; and

5
6 b. Defendant violated Cal. Civ. Code § 1788.17 by violating 15 U.S.C. § 1692f
7 by using unfair or unconscionable means in connection with the collection
8 of an alleged debt.
9

10 40. Defendant Honda and Syncom's acts, as described above, were done intentionally
11 with the purpose of coercing Plaintiff to pay the alleged debt.

12 41. As a result of the foregoing violations of the RFDCPA, Defendant is liable to
13 Plaintiff for actual damages, statutory damages, and attorneys' fees and costs.
14

15 **COUNT III**
16 **Defendant's Invasion of Privacy of Plaintiff**
17 **(Intrusion upon Seclusion)**

18 42. Plaintiff incorporates herein by reference all of the above paragraphs of this
19 complaint as though fully set forth herein at length.

20 43. Restatement of the Law, Second, Torts, § 652(b) defines intrusion upon seclusion
21 as "[o]ne who intentionally intrudes... upon the solitude or seclusion of another, or his
22 private affairs or concerns, is subject to liability to the other for invasion of privacy, if the
23 intrusion would be highly offensive to a reasonable person".
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25 44. Defendant violated Plaintiff's privacy. Defendant's violations include, but are not
26 limited to, the following:
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- a. Defendant intentionally intruded, physically or otherwise, upon Plaintiff's solitude and seclusion by engaging in harassing phone calls in an attempt to collect on an alleged debt despite having unequivocally revoked consent to be called.
- b. The number and frequency of the telephone calls to Plaintiff by Defendant constitute an intrusion on Plaintiff's privacy and solitude.
- c. Defendant's conduct would be highly offensive to a reasonable person as Plaintiff received calls that often interrupted Plaintiff's work and sleep schedule.
- d. Defendant's acts, as described above, were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

45. As a result of Defendant's violations of Plaintiff's privacy, Defendant is liable to Plaintiff for actual damages. If the Court finds that the conduct is found to be egregious, Plaintiff may recover punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff James Lineberger respectfully requests that judgment be entered against Defendant for the following:

- A. Declaratory judgment that Defendant violated the TCPA;
- B. Declaratory judgment that Defendant violated the RFDCPA;
- C. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C);

- 1 D. Statutory damages of \$1,000.00 pursuant to the RFDCPA, Cal. Civ. Code
2 §1788.30(b);
3
4 E. Actual damages pursuant to RFDCPA, Cal. Civ. Code §1788.30(b);
5
6 F. Punitive damages for intrusion upon Plaintiff's seclusion;
7
8 G. Costs and reasonable attorneys' fees pursuant to the RFDCPA, Cal. Civ.
9 Code §1788.30(c);
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11 H. Awarding Plaintiff any pre-judgment and post-judgment interest as may be
12 allowed under the law; and
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14 I. Any other relief that this Court deems appropriate.

12 **DEMAND FOR JURY TRIAL**

13 Please take notice that Plaintiff demands a trial by jury in this action.
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17 RESPECTFULLY SUBMITTED,
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19 Dated: May 18, 2018

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